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HOUSE BILL 838

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Andy Nuñez

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO SANITARY PROJECTS; AMENDING THE SANITARY PROJECTS
ACT WITH REGARD TO ASSOCIATIONS; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978 RELATING TO FUNDING SANITARY
PROJECTS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-29-2 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-28-2, as amended) is amended to read:

"3-29-2. DEFINITIONS.--As used in the Sanitary Projects
Act:

A. "community" means ~~[any]~~ a rural unincorporated
community and includes a combination of two or more rural
unincorporated communities when they have been combined for the
~~[purpose of securing the benefits of]~~ purposes set forth in the
Sanitary Projects Act;

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1 B. "association" includes ~~[any]~~ an association
2 organized under Laws 1947, Chapter 206, Laws 1949, Chapter 79
3 or Laws 1951, Chapter 52, as well as any association organized
4 under the provisions of the Sanitary Projects Act;

5 C. "department" means the department of
6 environment; ~~and~~

7 ~~D. "fund" means the sanitary projects fund]~~

8 D. "member" or "membership" means a person who has
9 paid the appropriate fees and has been issued a certificate as
10 required by association bylaws;

11 E. "person" means a single residence or property
12 owner, as determined by the rules and regulations adopted by
13 the association's board of directors; and

14 F. "project" means a water supply or reclamation,
15 storm drainage or wastewater facility owned, constructed or
16 operated by an association."

17 Section 2. Section 3-29-3 NMSA 1978 (being Laws 1965,
18 Chapter 300, Section 14-28-3, as amended) is amended to read:

19 "3-29-3. PURPOSE OF ACT ~~[STATEMENT OF POLICY]~~.--The
20 purpose of the Sanitary Projects Act is to improve the public
21 health of ~~[the people of New Mexico through a program that will~~
22 ~~provide for the installation of sanitary domestic water~~
23 ~~facilities, sewage works or both and thus eliminate present~~
24 ~~hazardous practices and conditions. It is, therefore, declared~~
25 ~~to be the policy of the legislature to assist in providing~~

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1 ~~facilities for the development of adequate, sanitary domestic~~
2 ~~water supplies, sewage works or both, together with all parts~~
3 ~~and appurtenances as may be needed to provide water supplies,~~
4 ~~sewage works or both in rural unincorporated communities]~~ rural
5 communities in New Mexico by providing for the establishment
6 and maintenance of a political subdivision of the state that is
7 empowered by the state to receive public funds for acquisition,
8 construction and improvement of water supply, storm drainage
9 and wastewater facilities in communities, and to operate and
10 maintain such facilities for the public good."

11 Section 3. Section 3-29-4 NMSA 1978 (being Laws 1965,
12 Chapter 300, Section 14-28-4, as amended) is amended to read:

13 "3-29-4. PROJECTS [~~ASSOCIATIONS--AID OF DEPARTMENT~~
14 ~~DIVISION--ENGINEER--PAYMENT FOR CONSTRUCTION]~~ .-- [~~In order to~~
15 ~~effectuate this policy and to promote the general health and~~
16 ~~welfare of the rural communities of New Mexico, the department~~
17 ~~is empowered and directed and shall be provided financial~~
18 ~~assistance to carry out the legislative intent from the fund~~
19 ~~and to formulate and keep current a program of projects for~~
20 ~~construction in said communities. The projects to be included~~
21 ~~within such program shall be located or determined by the board~~
22 ~~of directors of the association which shall be created in each~~
23 ~~community participating in the program for the sponsoring and~~
24 ~~maintenance of such project, acting upon recommendations from~~
25 ~~and subject to the approval of the department.] Plans,~~

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1 specifications and contracts [~~as specified in Section 14-28-5~~
2 ~~NMSA 1953~~] for each project shall be prepared by a [~~licensed~~]
3 practicing professional engineer licensed under the Engineering
4 and Surveying Practice Act and selected by the association [~~and~~
5 ~~approved by the department for each project~~] in accordance with
6 the provisions of [~~Sections 67-21-29 through 67-21-53 NMSA~~
7 ~~1953~~] the Procurement Code. The engineer shall also supervise
8 the construction and installation of the project and shall act
9 as coordinator and mediator between the contractor awarded the
10 contract and the association concerned. [~~The services of the~~
11 ~~engineer shall be secured by the association with the approval~~
12 ~~of the department except that if a project is of such small~~
13 ~~scale as not to be economically feasible to contract for~~
14 ~~engineering services, the department may furnish a licensed~~
15 ~~professional engineer from within the department to furnish~~
16 ~~such services. Reimbursement for services so rendered shall be~~
17 ~~made out of the fund, subject to the approval of the president~~
18 ~~of the association concerned as their agent and also subject to~~
19 ~~the approval of the department. Payment shall be made in two~~
20 ~~installments: one to cover the cost of preparing the plans,~~
21 ~~specifications and contract documents; the final payment to be~~
22 ~~made upon completion of the project to cover the cost of~~
23 ~~supervising the construction and installation. After approval~~
24 ~~of the plans, specifications and contract documents, the state~~
25 ~~purchasing agent shall call for and receive bids for~~

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1 ~~construction of the project and shall award the bid as provided~~
2 ~~by law. The state reserves the right to reject any and all~~
3 ~~bids. Payment to contractors from state funds shall be made as~~
4 ~~follows: forty percent of the bid price may be paid upon fifty~~
5 ~~percent completion of the project; the final payment of sixty~~
6 ~~percent shall be made upon completion of the project and final~~
7 ~~testing and acceptance.]"~~

8 Section 4. Section 3-29-5 NMSA 1978 (being Laws 1965,
9 Chapter 300, Section 14-28-5, as amended) is amended to read:

10 "3-29-5. [~~PREREQUISITE FOR INITIATING A PROJECT~~]

11 RESTRICTIONS ON FORMING AN ASSOCIATION.--

12 [~~A. As a prerequisite to initiating a project, it~~
13 ~~shall be necessary for the sponsors of each project to submit a~~
14 ~~written proposal to the department that shall:~~

15 ~~(1) state the number of families in the~~
16 ~~association and that all rights of way needed can and will be~~
17 ~~obtained by the association;~~

18 ~~(2) make formal application to the department~~
19 ~~for a grant-in-aid from the fund;~~

20 ~~(3) agree to assist the engineer engaged to~~
21 ~~prepare the plans and specifications in every reasonable way;~~
22 ~~and~~

23 ~~(4) agree to contribute all unskilled labor~~
24 ~~and such skilled labor as is available and desirable and shall~~
25 ~~further agree to contribute local materials such as sand,~~

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1 ~~gravel, stone, timbers, vigas, adobes and other materials that~~
2 ~~it is feasible and desirable to obtain locally. They shall~~
3 ~~further agree to finish the project on or before the date~~
4 ~~specified at the time the contracts are awarded.~~

5 ~~B.]~~ A. No new association shall be formed under the
6 Sanitary Projects Act by original incorporation after January
7 1, 2000, and no new association shall be formed by
8 reorganization after January 1, 2000, unless the predecessor
9 entity was in existence on January 1, 2000, if the service area
10 of either association includes property contiguous to an
11 incorporated municipality or an unincorporated area currently
12 served by a municipality. The restrictions on forming an
13 association set forth in this subsection shall not apply if the
14 contiguous incorporated municipality does not provide the
15 services or cannot provide the services to be provided by the
16 association at or below the cost proposed by the association.

17 ~~[G.]~~ B. No association may construct a project
18 required in order to allow creation of a subdivision under the
19 provisions of the Land Subdivision Act, the New Mexico
20 Subdivision Act or Section 47-5-9 NMSA 1978; however, an
21 association may construct a project serving a previously
22 approved subdivision in the service area of the association.

23 ~~[D. After the association has been formed and a~~
24 ~~practicing professional engineer has been engaged to handle the~~
25 ~~plans, specifications and contract documents for the job, the~~

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1 ~~engineer shall list separately the balance of all labor,~~
2 ~~materials and equipment and other items that are to be paid for~~
3 ~~from state funds and that are necessary to ensure the~~
4 ~~completion of an operating project, aside from the detailed~~
5 ~~estimates covering labor and material contributions by the~~
6 ~~association. Cost estimates shall be provided for all items~~
7 ~~listed in the mutual contract and the totals shall indicate the~~
8 ~~cost of the project to the state and also the estimated~~
9 ~~equivalent total cost the association is contributing.~~
10 ~~Projects shall not be approved unless the estimated equivalent~~
11 ~~total cost the association is contributing is equal to or~~
12 ~~exceeds one-third of the total estimated state cost for a~~
13 ~~completed job. Associations may contribute financial~~
14 ~~assistance in addition to the contributions of labor or~~
15 ~~materials as specified in this subsection in order to reach~~
16 ~~their one-third contribution or to provide for completion of a~~
17 ~~project not completely financed by the provisions of the~~
18 ~~Sanitary Projects Act. Should an association enter into a loan~~
19 ~~agreement with the farmers home administration or its successor~~
20 ~~agency, the department may deposit the amount of any grant-in-~~
21 ~~aid with the farmers home administration or its successor~~
22 ~~agency for the purpose of cooperating in the financing of a~~
23 ~~single contract covering one project.~~

24 ~~E. After the department has been satisfied that the~~
25 ~~prerequisites specified in Subsection B of this section have~~

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1 ~~been complied with, the association shall be eligible for a~~
2 ~~grant in aid from the fund.~~

3 ~~F. Prior to approval of project plans and~~
4 ~~specifications by the department, such plans and specifications~~
5 ~~shall be submitted to and reviewed by the local government~~
6 ~~division of the department of finance and administration for~~
7 ~~conformity to countywide water and sewer plans. Approval of~~
8 ~~the plans by the local government division shall be a~~
9 ~~prerequisite to approval of the plans, specifications and~~
10 ~~contract documents by the department.]~~

11 C. After July 1, 2005, no new association may be
12 formed as a capital stock corporation."

13 Section 5. Section 3-29-6 NMSA 1978 (being Laws 1965,
14 Chapter 300, Section 14-28-6, as amended) is amended to read:

15 "3-29-6. BOARD OF DIRECTORS--POWERS AND DUTIES---

16 A. The board of directors of each association shall
17 be responsible for the [~~acquiring~~] acquisition or purchase of
18 all property, rights of way, equipment and materials as may be
19 necessary for the completion of [~~the~~] a project. The directors
20 [~~acting in~~] shall act on behalf of the association and as its
21 agents. The association, acting through its board of
22 directors, [~~with the approval of the environmental improvement~~
23 ~~division~~] may exercise the right of eminent domain to take and
24 acquire the necessary property or rights of way for the
25 construction, maintenance and operation of water and sewer

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1 lines and related facilities, but such property and rights of
2 way shall in all cases be so located as to do the least damage
3 to private and public property consistent with proper use and
4 economical construction. Such property or rights of way shall
5 be acquired in the manner provided by the Eminent Domain Code.
6 In accordance with Sections 42A-1-8 through 42A-1-12 NMSA 1978,
7 engineers, surveyors and other persons under contract with the
8 board for the purposes of the project shall have the right to
9 enter upon property of the state, its political subdivisions,
10 private persons and private and public corporations for the
11 purpose of making necessary surveys and examinations for
12 selecting and locating suitable routes for water and sewer
13 lines and facilities. [~~Payments for such services, purchases
14 and other purposes as are necessary shall be made from the fund
15 upon voucher drawn by the secretary-treasurer of an association
16 approved by the division and supported by warrant of the
17 department of finance and administration drawn upon the state
18 treasury.~~]

19 B. The board of directors of the association may
20 set and, from time to time, increase or adjust assessments,
21 water and sewer rates, tolls or charges for services or
22 facilities furnished or made available by the association. The
23 assessments, tolls and charges include:

24 (1) a base monthly service fee for each active
25 connection delivering water;

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- 1 (2) a base monthly service fee for each
- 2 inactive connection;
- 3 (3) a standby charge for the privilege of
- 4 connecting into the association's water service at some date in
- 5 the future;
- 6 (4) assessments based on the volume of water
- 7 delivered;
- 8 (5) a connection charge; and
- 9 (6) an assessment necessary to cover the cost
- 10 of extending either water or sewer service.

11 C. The board of directors of the association may

12 place a lien on property to which services have been extended

13 in the amount of all outstanding assessments, charges and fees

14 associated with the services. The board of directors may

15 enforce the lien in a manner provided by the laws of the state.

16 In the event the board of directors is forced to enforce the

17 lien in a court of competent jurisdiction in New Mexico, the

18 board of directors shall be entitled to recover all costs and

19 attorney fees.

20 D. The board of directors of the association shall

21 shut off unauthorized connections, illegal connections or a

22 connection for which charges are delinquent in payment. The

23 board of directors may file suit in a court of competent

24 jurisdiction to recover costs associated with an unauthorized

25 or illegal connection or delinquent connection, including the

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1 cost of water delivered, charges for facility connection and
2 disconnection, damages and attorney fees.

3 E. The board of directors of the association shall
4 prescribe and enforce rules and regulations for the connection
5 to and disconnection from properties of facilities of the
6 association.

7 F. Each member of the board of directors of the
8 association shall complete a minimum of eight hours of
9 training, as determined by the department, within one year of
10 election to the board. The training shall include applicable
11 laws and regulations, such as the Open Meetings Act, Inspection
12 of Public Records Act, Audit Act, Procurement Code, Sanitary
13 Projects Act and rate setting."

14 Section 6. Section 3-29-7 NMSA 1978 (being Laws 1965,
15 Chapter 300, Section 14-28-7, as amended) is amended to read:

16 "3-29-7. ~~[CONDITIONS DEPARTMENT MAY REQUIRE BEFORE~~
17 ~~EXTENDING BENEFITS]~~ DEPARTMENT POWERS.--

18 A. Insofar as the department deems it necessary for
19 the purpose of the Sanitary Projects Act, the department may
20 ~~[as a condition to extending benefits under its provisions to~~
21 ~~any community or group of individuals]~~ recommend ~~[(1)]~~
22 agreements, ~~[or]~~ covenants or rules in regard to operation,
23 maintenance and permanent use of ~~[such lands, water or~~
24 ~~facilities benefited by a domestic water supply, sewers or~~
25 ~~treatment plant or any of them; provided that the water~~

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1 ~~supplies developed shall not in any case be used for irrigation~~
2 ~~of commercial crops. The liquid effluent from sewage plants~~
3 ~~shall not be used for the irrigation of truck crops or fruits,~~
4 ~~and livestock shall not have access to sewage plant effluents;~~

5 ~~(2) contributions in cash by the association~~
6 ~~in addition to the contract for labor, materials or services as~~
7 ~~specified in Section 3-29-5 NMSA 1978; provided that the~~
8 ~~association's contribution shall always equal or exceed one-~~
9 ~~third of the total state cost; and~~

10 ~~(3) that the state cooperate and contribute~~
11 ~~financial aid according to the following schedules:~~

12 ~~(a) a maximum of seven thousand dollars~~
13 ~~(\$7,000) for each water project or for each sewer project where~~
14 ~~twenty-eight or fewer dwelling units are to be served; provided~~
15 ~~that no association shall be formed that shall not provide~~
16 ~~service for at least ten domestic dwelling units; and~~

17 ~~(b) two hundred fifty dollars (\$250) per~~
18 ~~dwelling unit where more than twenty-eight dwelling units are~~
19 ~~to be served; provided that the total allowable maximum state~~
20 ~~expenditure for each water project or for each sewer project~~
21 ~~shall not exceed twelve thousand dollars (\$12,000).~~

22 ~~B. A requisite to securing such allocation of funds~~
23 ~~upon a department recommendation shall be that the individuals~~
24 ~~either collectively or individually in an association shall~~
25 ~~agree to provide proper sewage disposal facilities for the~~

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1 ~~sanitary removal of potentially harmful material classified as~~
2 ~~sewage, which shall be occasioned by the installation of~~
3 ~~running water facilities. Associations shall be eligible for~~
4 ~~construction grants as provided for in the Federal Water~~
5 ~~Pollution Control Act.~~

6 G. ~~No privy, cesspool, septic tank or other means~~
7 ~~of sewage disposal or treatment shall be located within one~~
8 ~~hundred fifty feet of any well, spring or other source of~~
9 ~~domestic water supply created under the provisions of the~~
10 ~~Sanitary Projects Act.~~

11 D.] water supply, reclamation, storm drainage and
12 wastewater facilities. The department may in its discretion
13 and shall upon the petition of twenty-five percent of the
14 [~~users of a project~~] members of the association hold a
15 hearing and make a determination as to whether [~~a sanitary~~
16 ~~project~~] the association is being operated and managed in the
17 best interest of all [~~local citizens~~] members of the
18 association. If the department, after a hearing, determines
19 that [~~a project~~] an association is not being operated or
20 managed in the best interests of the [~~local citizens~~]
21 members, the department may intervene in the operation and
22 management with full powers, including the power to set and
23 collect assessments from members of the association, to set
24 and collect service charges and use the same for the proper
25 operation and management of the [~~project~~] association. The

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1 department may appoint and delegate authority to a
2 representative to oversee operation of the association for a
3 specified period.

4 B. The department may:

5 (1) conduct periodic reviews of the
6 operation of the association;

7 (2) require the association to submit
8 information to the department;

9 (3) require submittal of audits required
10 pursuant to the Audit Act; and

11 (4) require that each member of the board of
12 directors complete eight hours of training as described in
13 Section 3-29-6 NMSA 1978."

14 Section 7. Section 3-29-9 NMSA 1978 (being Laws 1965,
15 Chapter 300, Section 14-28-9) is amended to read:

16 "3-29-9. RULES AND REGULATIONS [~~COOPERATION AND~~
17 ~~ASSISTANCE BY FEDERAL AND STATE AGENCIES]~~.--For the purposes
18 of the Sanitary Projects Act, the department may [~~A.~~] perform
19 such acts and prescribe such rules and regulations as are
20 deemed necessary to carry out its provisions, insofar as the
21 public health is involved [~~and~~

22 ~~B. secure the cooperation and technical~~
23 ~~assistance of any federal or state agency and further may~~
24 ~~request that geological surveys be made by the state engineer~~
25 ~~to determine the feasibility of developing water supplies for~~

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1 ~~specific projects]."~~

2 Section 8. Section 3-29-12 NMSA 1978 (being Laws 1965,
3 Chapter 300, Section 14-28-12, as amended) is amended to
4 read:

5 "3-29-12. LOCAL ADMINISTRATION OF [PROJECTS]
6 ASSOCIATION--BOARD OF DIRECTORS [TERMS].--

7 A. The local administration of [~~any project~~] the
8 association and the operation and maintenance of the
9 [~~completed~~] project shall be carried out in each community by
10 a board of directors composed of [~~five~~] an odd number of at
11 least three members. Members of the board of directors
12 shall: [~~be elected biennially from the membership of the~~
13 ~~association for staggered terms of four years each, except~~
14 ~~that in the first election, which shall be held in 1970, the~~
15 ~~elected directors shall draw lots so that two of the~~
16 ~~directors shall serve first terms of two years each, after~~
17 ~~which the positions of the two directors ending in 1972 shall~~
18 ~~be filled by the election of two successor directors for full~~
19 ~~four-year terms. The purpose of the two-year first terms is~~
20 ~~to provide for a system of staggered four-year terms so that~~
21 ~~three directors will be elected in one year and two years~~
22 ~~later the other two directors shall be elected.]~~

23 (1) be elected annually or as specified in
24 the bylaws of the association;

25 (2) be members in good standing of the

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1 association; and

2 (3) serve staggered terms of up to four
3 years to ensure that terms will end in different election
4 years.

5 B. The board of directors shall choose among its
6 members a president, a vice president and a secretary-
7 treasurer or a secretary and a treasurer.

8 C. ~~[The board of directors shall appoint a~~
9 ~~foreman to care for and regulate the association project or~~
10 ~~projects.] Funds [in an amount] sufficient to provide for~~
11 proper operation and maintenance of the association shall be
12 identified through a rate-setting analysis that will ensure
13 enough revenue to cover yearly expenses and emergencies, a
14 reserve fund for non-major capital items and equitable pay
15 for staff. The rate-setting analysis may be reviewed and
16 changed if necessary on a yearly basis and shall be obtained
17 by the association by a monthly assessment against the users
18 of the facilities, ~~[said]~~ the assessment to be determined by
19 the board of directors.

20 D. The board of directors of the association
21 shall have power to do all things necessary in the local
22 administration of any project subject to the provisions of
23 the Sanitary Projects Act.

24 ~~[E. The department shall require that an~~
25 ~~association shall be formed and a board of directors chosen~~

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1 ~~before any community may participate in any benefits.]"~~

2 Section 9. Section 3-29-13 NMSA 1978 (being Laws 1965,
3 Chapter 300, Section 14-28-13) is amended to read:

4 "3-29-13. EXISTING ASSOCIATIONS [~~ELIGIBLE FOR~~
5 ~~ADDITIONAL BENEFITS~~].--Associations organized under the
6 provisions of Laws 1947, Chapter 206, Laws 1949, Chapter 79
7 or Laws 1951, Chapter 52 shall have the same powers and
8 duties as associations organized under the provisions of the
9 Sanitary Projects Act and shall be eligible [~~for benefits for~~
10 ~~construction of sewers and treatment plants~~] to construct,
11 operate and maintain a project without [~~the necessity for~~
12 organizing a new association; provided that the articles of
13 incorporation shall be amended in accordance with the
14 provisions of Section [~~14-28-19 New Mexico Statutes~~
15 ~~Annotated, 1953 Compilation~~] 3-29-19 NMSA 1978."

16 Section 10. Section 3-29-15 NMSA 1978 (being Laws 1965,
17 Chapter 300, Section 14-28-15, as amended) is amended to
18 read:

19 "3-29-15. ASSOCIATION CONSTITUTES A PUBLIC BODY
20 CORPORATE [~~DEBTS--ISSUANCE OF BONDS~~].--[~~A.~~] Upon the filing
21 of each certificate and copy thereof as provided in Section
22 3-29-17 NMSA 1978, the persons so associating, their
23 successors and those who may thereafter become members of the
24 association constitute a public body corporate by the name
25 set forth in the certificate and by such name may sue and be

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1 sued, have capacity to make contracts, acquire, hold, enjoy,
2 dispose of and convey property real and personal, accept
3 grants and donations, borrow money, incur indebtedness,
4 impose fees and assessments and do any other act or thing
5 necessary or proper for carrying out the purposes of their
6 organization.

7 ~~[B. Associations shall have power to become~~
8 ~~indebted or issue bonds in a form approved by the attorney~~
9 ~~general for expansion and improvement of the association's~~
10 ~~facilities by pledging future income from service charges.~~
11 ~~Such indebtedness by an association is contingent upon~~
12 ~~approval by the department and the department of finance and~~
13 ~~administration and upon a proper showing by the association~~
14 ~~to both departments that the indebtedness is for necessary~~
15 ~~refinancing, refunding, expansion or improvement purposes and~~
16 ~~that the financial condition and future income of the~~
17 ~~association warrant approval of such indebtedness or issuance~~
18 ~~of bonds by the association. No association has power to~~
19 ~~become indebted or issue bonds of any kind other than as~~
20 ~~permitted by this section.]"~~

21 Section 11. Section 3-29-16 NMSA 1978 (being Laws 1965,
22 Chapter 300, Section 14-28-16, as amended) is amended to
23 read:

24 "3-29-16. CERTIFICATE OF ASSOCIATION.--

25 A. The members of an association shall execute a

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1 certificate setting forth:

2 (1) the name of the association;

3 (2) the name of the [~~incorporators~~]

4 individuals organizing the association;

5 (3) the location of the principal office of
6 the association in this state;

7 (4) the objects and purposes of the
8 association;

9 (5) the address of the initial registered
10 office of the association and the name of the initial
11 registered agent at that address;

12 (6) [~~the amount of capital stock and number~~
13 ~~and denomination of the shares or, if the incorporators do~~
14 ~~not desire to issue shares of stock]~~ the plan and manner of
15 acquiring membership and of providing funds or means for the
16 acquisition, construction, improvement and maintenance of its
17 work and for its necessary expenses;

18 [~~(7) the period, if any, delimited for the~~
19 ~~duration of the association; and]~~

20 (7) the duration of existence of the
21 association, which may be perpetual;

22 (8) the number and manner of electing the
23 board of directors of the association and the length of the
24 terms that the directors will serve;

25 (9) the definition of a member of the

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1 association and the voting rights associated with the
2 membership; and

3 (10) the manner of dissolution of the
4 association as a public body.

5 B. Pursuant to the registered agent requirement
6 of Paragraph (5) of Subsection A of this section, there shall
7 be attached to the certificate a statement executed by the
8 registered agent in which the agent acknowledges acceptance
9 of the appointment by the filing association, if the agent is
10 an individual, or a statement executed by an authorized
11 officer of a corporation in which the officer acknowledges
12 the corporation's acceptance of the appointment by the filing
13 association as its registered agent, if the agent is a
14 corporation.

15 C. The certificate or any amendment thereof made
16 as provided in Section 3-29-19 NMSA 1978 may also contain
17 provisions not inconsistent with the Sanitary Projects Act or
18 other law of this state that the [~~incorporators~~] organizers
19 may choose to insert for the regulation and conduct of the
20 business and affairs of the association. There shall
21 accompany each certificate a list [~~of the names of all~~
22 ~~members of the association, the list~~] to [~~also~~] show the
23 total number of members of the association and the total
24 number of dwelling units [~~that can be~~] served [~~if the project~~
25 ~~is completed~~] by the association at the time of filing."

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1 Section 12. Section 3-29-17 NMSA 1978 (being Laws 1965,
2 Chapter 300, Section 14-28-17, as amended) is amended to
3 read:

4 "3-29-17. FILING OF CERTIFICATE AND BYLAWS.--The
5 certificate of association and bylaws shall be acknowledged
6 as required for deeds of real estate and shall be filed in
7 the office of the public regulation commission. A copy of
8 the certificate, duly certified by the commission or county
9 clerk, shall be evidence in all courts and places."

10 Section 13. Section 3-29-17.4 NMSA 1978 (being Laws
11 2001, Chapter 200, Section 7) is amended to read:

12 "3-29-17.4. ANNUAL REPORT.--

13 A. An association shall file, within the time
14 prescribed by the Sanitary Projects Act, on forms prescribed
15 and furnished by the public regulation commission to the
16 association not less than thirty days prior to the date the
17 report is due, an annual report setting forth:

18 (1) the name of the association [~~and the~~
19 ~~state or country under the laws of which it is incorporated~~];

20 (2) the address of the registered office of
21 the association in the state and the name of its registered
22 agent in this state at that address;

23 (3) a brief statement of the character of
24 the affairs that the association is actually conducting; and

25 (4) the names and respective addresses of

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1 the directors and officers of the association.

2 B. The report shall be signed and sworn to by
3 [~~any~~] two of the members of the association. If the
4 association is in the hands of a receiver or trustee, the
5 report shall be executed on behalf of the association by the
6 receiver or trustee. A copy of the report shall be
7 maintained at the association's principal place of business
8 as contained in the report and shall be made available to the
9 general public for inspection during regular business hours."

10 Section 14. Section 3-29-17.5 NMSA 1978 (being Laws
11 2001, Chapter 200, Section 8) is amended to read:

12 "3-29-17.5. FILING OF ANNUAL REPORT--SUPPLEMENTAL
13 REPORT--EXTENSION OF TIME--PENALTY.--

14 A. The annual report of the association shall be
15 delivered to the public regulation commission on or before
16 the fifteenth day of the fifth month following the end of its
17 [~~taxable~~] fiscal year.

18 B. A supplemental report shall be filed by the
19 association with the public regulation commission, if, within
20 thirty days after the filing of the annual report required
21 under the Sanitary Projects Act, a change is made in:

22 (1) the name of the association;

23 (2) the mailing address, street address or
24 the geographical location of the association's registered
25 office in this state and the name of the agent upon whom

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1 process against the association may be served; or

2 (3) the character of the association's
3 business and its principal place of business within [~~or~~
4 ~~without~~] the state.

5 C. Proof to the satisfaction of the public
6 regulation commission that, prior to the due date of [~~any~~] a
7 report required by [~~Subsections A or B of~~] this section, the
8 report was deposited in the United States mail in a sealed
9 envelope, properly addressed, with postage prepaid, shall be
10 deemed compliance with the requirements of this section. If
11 the commission finds that the report conforms to the
12 requirements of the Sanitary Projects Act, it shall file the
13 report. If the commission finds that it does not conform, it
14 shall promptly return the report to the association for [~~any~~]
15 necessary corrections. The penalties prescribed for failure
16 to file the report within the time provided shall not apply
17 if the report is corrected to conform to the requirements of
18 the Sanitary Projects Act and returned to the commission
19 within thirty days from the date on which it was mailed to
20 the association by the commission.

21 D. The public regulation commission may, upon
22 application by the association and for good cause shown,
23 extend, for no more than a total of twelve months, the date
24 on which [~~any return~~] an annual report required by the
25 provisions of the Sanitary Projects Act must be filed or the

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1 date on which the payment of [~~any~~] a fee is required. The
2 commission shall, when an extension of time has been granted
3 an association under the [~~United States~~] federal Internal
4 Revenue Code of 1986 for the time in which to file a return,
5 grant the association the same extension of time to file the
6 required [~~return~~] annual report and to pay the required fees,
7 provided that a copy of the approved federal extension of
8 time is attached to the association's report, and provided
9 further that no such extension shall prevent the accrual of
10 interest as otherwise provided by law.

11 E. Nothing contained in this section prevents the
12 collection of a fee or penalty due upon the failure of an
13 association to submit the required report.

14 F. No annual or supplemental report required to
15 be filed under this section shall be deemed to have been
16 filed if the fees accompanying the report have been paid by
17 check and the check is dishonored upon presentation.

18 G. An association that fails or refuses to file a
19 report for a year within the time prescribed by the Sanitary
20 Projects Act is subject to a penalty of ten dollars (\$10.00)
21 to be assessed by the public regulation commission.

22 H. An association shall file a member
23 accountability report that shall include:

24 (1) a financial statement prepared in
25 accordance with generally accepted accounting principles; and

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1 (2) a copy of the Open Meetings Act
2 resolution stating what notice for a public meeting is
3 reasonable. The report shall be signed and sworn to as to
4 accuracy and completeness by all members of the board of
5 directors of the association. A statement shall be included
6 in the consumer confidence report required for water systems
7 that the member accountability report is available to the
8 public upon request. The member accountability report shall
9 be filed with the department with the consumer confidence
10 report no later than July 1 of each year."

11 Section 15. Section 3-29-19 NMSA 1978 (being Laws 1965,
12 Chapter 300, Section 14-28-19) is amended to read:

13 "3-29-19. AMENDMENT OF ~~[ARTICLES OF INCORPORATION]~~
14 CERTIFICATE OF ASSOCIATION AND BYLAWS--METHOD.--Every
15 association may ~~[change its name, increase or decrease its~~
16 ~~capital stock or membership, change the location of its~~
17 ~~principal office in this state, extend the period of its~~
18 ~~existence and]~~ make such ~~[other]~~ amendment, change or
19 alteration as may be desired not inconsistent with the
20 Sanitary Projects Act or other law of this state by a
21 resolution adopted by a vote of a majority of the members
22 present at any regular or special meeting duly held upon such
23 notice as the bylaws provide. A certified copy of such
24 resolution with the affidavit of the president and secretary
25 that ~~[said]~~ the resolution was duly adopted by a majority

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1 vote of [~~such shareholders or~~] the members at a meeting held
2 in accordance with the provisions of this section shall be
3 filed and recorded as provided for filing and recording the
4 original certificate of [~~incorporation~~] association and
5 bylaws, and thereupon the certificate of [~~incorporation~~]
6 association and bylaws shall be deemed to be amended
7 accordingly, and a copy of such certificate of amendment
8 certified by the [~~state corporation~~] public regulation
9 commission or the county clerk shall be accepted as evidence
10 of each change or amendment in all courts and places."

11 Section 16. A new section of the Sanitary Projects Act
12 is enacted to read:

13 "[NEW MATERIAL] BYLAWS.--

14 A. Members shall adopt bylaws by a majority vote
15 of the membership of the association setting forth:

16 (1) the name of the association;
17 (2) the requirement of an association seal;
18 (3) the fiscal year of the association;
19 (4) guidelines for membership, which shall
20 include the sentence "Membership shall not be denied because
21 of the applicant's race, color, creed, national origin or
22 sex.";

23 (5) guidelines for meetings of the
24 membership, which shall include the date or time period of a
25 membership meeting, required notice of a meeting,

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1 establishment of a quorum and the order of business to be
2 conducted at a meeting of the membership;

3 (6) the functions of the board of directors,
4 including a conflict of interest policy for the board;

5 (7) the duties of officers of the board of
6 directors;

7 (8) a description of the area of service;
8 and

9 (9) provisions for the board of directors to
10 establish rules and regulations to govern the day-to-day
11 operations of the project, including a code of conduct for
12 staff and provisions to establish an annual budget, rate
13 structure, assessments and reserve funds.

14 B. The bylaws, or any amendment thereof made as
15 provided in Section 3-29-19 NMSA 1978, may also contain
16 provisions not inconsistent with the Sanitary Projects Act or
17 other law of this state that the organizers may choose to
18 insert for the regulation and conduct of the business and
19 affairs of the association."

20 Section 17. A new section of the Sanitary Projects Act
21 is enacted to read:

22 "[NEW MATERIAL] EXEMPTIONS FROM SPECIAL DISTRICT
23 PROCEDURES ACT PROVISIONS.--An association formed pursuant to
24 the provisions of the Sanitary Projects Act may be formed
25 exclusively as provided in that act, and formation of the

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1 association shall be exempt from all review and requirements
2 set forth in the Special Districts Procedures Act."

3 Section 18. A new section of the Sanitary Projects Act
4 is enacted to read:

5 "[NEW MATERIAL] MERGER OF TWO OR MORE ASSOCIATIONS INTO
6 ONE ASSOCIATION.--Two or more associations may merge into one
7 association pursuant to a plan of merger approved in the
8 manner provided in state law. The board of directors of each
9 association shall, by resolution adopted by each board,
10 approve a plan of merger setting forth:

11 A. the names of the associations proposing to
12 merge, and the associations into which they propose to merge
13 which is hereinafter designated as the "surviving
14 association";

15 B. the terms and conditions of the proposed
16 merger;

17 C. the manner and basis of converting each
18 association into obligations or other securities of the
19 surviving association;

20 D. a statement of any changes in the articles of
21 incorporation of the surviving association to be affected by
22 the merger; and

23 E. other provisions with respect to the proposed
24 merger as deemed necessary or desirable."

25 Section 19. REPEAL.--Sections 3-29-8, 3-29-10 and

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1 3-29-18 NMSA 1978 (being Laws 1965, Chapter 300, Sections
2 14-28-8, 14-28-10 and 14-28-18, as amended) are repealed.

3 Section 20. SEVERABILITY.--If any part or application
4 of this act is invalid, the remainder of its application to
5 other situations or persons shall not be affected.

6 Section 21. EMERGENCY.--It is necessary for the public
7 peace, health and safety that this act take effect
8 immediately.

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